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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HO THAI NGUYEN, Petitioner - Appellant, v. CAL A. TERHUNE, Director, Respondent - Appellee.	No. 05-16097 D.C. No. CV-03-00676-CRB MEMORANDUM [*]

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted July 24, 2006 [**]

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

California state prisoner Ho Thai Nguyen appeals *pro se* from the district court's judgment denying his habeas petition under 28 U.S.C. § 2254. Nguyen was convicted of three counts of first-degree murder and sentenced to three

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

consecutive terms of life in prison without the possibility of parole. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253. We review *de novo* the denial of habeas relief, *Beardslee v. Woodford*, 358 F.3d 560, 568 (9th Cir. 2004), and we affirm.

Nguyen contends that the prosecutor committed misconduct during closing argument by calling him a gang member, by suggesting that the shooting was gang-related because one of the victims was wearing a particular color of clothing, and by attributing the murders to a "gang war" between Nguyen's gang and a rival gang. Evidence at trial indicated that those who committed an earlier shooting against a leader of Nguyen's gang wore a particular color of clothing, that Nguyen's gang leader believed members of a rival gang might be at fault, and that in response to the shooting of his gang leader Nguyen and his codefendants purposely targeted someone wearing that same color of clothing. The prosecutor's comments were thus reasonable inferences from the evidence and did not poison the trial by their unfairness. *See Darden v. Wainwright*, 477 U.S. 168, 181 (1986); *Duckett v. Godinez*, 67 F.3d 734, 742-43 (9th Cir. 1995).

Nguyen raises other contentions of prosecutorial misconduct for the first time on appeal. We will therefore not consider them. *See Vision Air Flight Serv., Inc. v. M/V National Pride*, 155 F.3d 1165, 1168 n.2 (9th Cir. 1998).

Nguyen's request to broaden the certificate of appealability to encompass issues not previously certified for appeal is denied. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104 (9th Cir. 1999) (per curiam).

AFFIRMED.